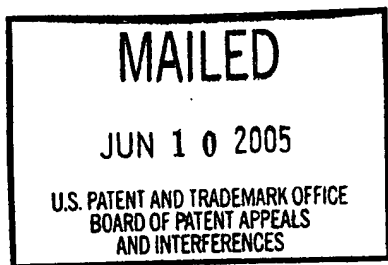


The opinion in support of the decision being entered today was not written
for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte CRAIG A. SCHELL et al.



Appeal No. 2005-1204
Application No. 10/057,476

ON BRIEF

Before FRANKFORT, McQUADE, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claim 3.
Claims 1, 2 and 7 to 32, the only other claims pending in this application, have been
withdrawn from consideration.

We AFFIRM.

BACKGROUND

The appellants' invention relates to fastener tools (specification, p. 1). Claim 3 under appeal reads as follows:

A fastener tool comprising:
a housing;
a magazine connected to the housing for storing a fastener;
a driving mechanism disposed within the housing for driving the fastener into a workpiece;
a contact trip assembly slidably mounted to the housing and movable when a user pushes the housing towards the workpiece;
a trigger assembly pivotally attached to the housing for activating the driving mechanism, said trigger assembly being rotatable relative to the housing about a first axis, said trigger assembly comprising a main trigger pivotally attached to the housing, and a supplemental trigger pivotally attached to the main trigger, said supplemental trigger being movable by the contact trip assembly, said driving mechanism being activated only when the user rotates the main trigger and the contact trip assembly moves the supplemental trigger; and
a trigger lock disposed between the housing and the trigger assembly, the trigger lock being rotatable about a second axis substantially perpendicular to the first axis between a first position limiting the pivoting range of the trigger assembly relative to the housing for preventing the trigger assembly from activating the driving mechanism, and a second position not preventing the trigger assembly from activating the driving mechanism position, the trigger lock having a handle for moving the trigger lock between the first and second positions, said handle being rotatable with the trigger lock about the second axis.

Claim 3 stands rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,785,228 to Fa et al. (Fa) in view of U.S. Patent No. 5,823,395 to Foster et al. (Foster).

The sole issue raised in this appeal by the appellants is that Foster is non-analogous art and cannot be used in a rejection under 35 U.S.C. § 103. The conflicting viewpoints advanced by the examiner and the appellants regarding this issue are set forth in the brief (filed March 8, 2004), the answer (mailed April 29, 2004) and the reply brief (filed June 28, 2004).

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claim 3, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we will sustain the rejection of claim 3 for the reasons which follow.

The scope of the relevant prior art usable in a rejection under 35 U.S.C. § 103 includes art "reasonably pertinent to the particular problem with which the inventor was involved." Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530, 1535, 218 USPQ 871, 876 (Fed. Cir. 1983) (quoting In re Wood, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979)). Therefore, the prior art relevant to an obviousness determination necessarily encompasses not only the field of the appellants' endeavor but also any analogous arts. See Wood, 599 F.2d at 1036, 202 USPQ at 174; Heidelberger Druckmaschinen v. Hantscho Commercial, 21 F.3d 1068, 1071, 30 USPQ2d 1377, 1379 (Fed. Cir. 1994)

("References that are not within the field of the inventor's endeavor may also be relied on in patentability determinations, and thus are described as 'analogous art', when a person of ordinary skill would reasonably have consulted those references and applied their teachings in seeking a solution to the problem that the inventor was attempting to solve." (citation omitted)). In deciding whether a reference is from a relevant art, we first must determine whether the reference is within the appellants' field of endeavor, and if it is not we next must determine whether the reference is reasonably pertinent to the particular problem confronting the appellants. Wood, 599 F.2d at 1036, 202 USPQ at 174.

The appellants' field of endeavor in this case is fastener tools. Clearly, Foster's invention drawn to manually operated pump dispensers such as trigger sprayers is not within the appellants' field of endeavor. Accordingly, we must now determine if Foster is analogous art that is "reasonably pertinent to the particular problem with which the inventor was involved." Wood, 599 F.2d at 1036, 202 USPQ at 174. "A reference is reasonably pertinent if, even though it may be in a different field of endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem." In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1061 (Fed. Cir. 1992). If a reference disclosure relates to the same problem as that addressed by the claimed invention, "that fact supports use of that

reference in an obviousness rejection. An inventor may well have been motivated to consider the reference when making his invention." Id.

Page 8, paragraph [0047] of the appellants' specification informs us that the particular problem with which the appellants were involved was providing a trigger lock mechanism 26 "for preventing undesired triggering of main trigger 21."

Foster teaches (column 1, line 34, to column 2, line 4) that:

An object of the present invention is to provide a child-resistant pump dispenser which overcomes the disadvantages associated with conventional pump dispensers. Another object is the provision of a pump dispenser having child-resistant features which are not easily operated by a child, but which are easily operated by an adult. A further object of the present invention is the provision of a child-resistant pump dispenser which is capable of releasably preventing movement of the trigger and pump mechanism. Yet another object of the present invention is the provision of a child-resistant pump dispenser which is relatively low in cost and which is relatively simple in construction.

In general, a child-resistant liquid dispenser of the present invention comprises a dispenser body, a pump mechanism, a first locking mechanism, and a second locking mechanism. The dispenser body has an fluid intake port and a fluid discharge port. The pump mechanism is adjacent the dispenser body and includes a moveable member. The moveable member is moveable relative to the dispenser body between first and second positions along an axis. The pump mechanism is configured to draw liquid into the intake port and discharge it through the discharge port upon movement of the moveable member between its first and second positions. The first locking mechanism is adjacent the pump mechanism and dispenser body and is moveable between locked and unlocked positions. The first locking mechanism is engageable with both the moveable member of the pump mechanism and the dispenser body when the first locking mechanism is in its locked position in a manner to prevent movement of the

moveable member from its first position to its second position. The first locking mechanism is configured to permit movement of the moveable member between its first and second positions when the first locking mechanism is in its unlocked position. The second locking mechanism is adjacent to the first locking mechanism and is configured to releasably engage the first locking mechanism in a manner to releasably retain the first locking mechanism in its locked position.

From these teachings of Foster, we consider the structural similarities and the functional overlap between the pump dispenser trigger locking mechanism taught by Foster and the fastener tool trigger lock claimed by the appellants to be readily apparent. We conclude that Foster is "reasonably pertinent to the particular problem with which the inventor was involved" and accordingly is analogous art. Cf. In re Ellis, 476 F.2d 1370, 1372, 177 USPQ 526, 527 (CCPA 1973); In re Heldt, 433 F.2d 808, 812, 167 USPQ 676, 679 (CCPA 1970).

Since Foster is analogous art for the reasons set forth above and the appellants have not further disputed the combination of Fa and Foster, the decision of the examiner to reject claim 3 under 35 U.S.C. § 103 is affirmed.

CONCLUSION

To summarize, the decision of the examiner to reject claim 3 under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR § 1.136(a).

AFFIRMED

Charles E. Frankfort

CHARLES E. FRANKFORT
Administrative Patent Judge

John P. McQuade
JOHN P. McQUADE
Administrative Patent Judge

Jeffrey V. Nase
JEFFREY V. NASE
Administrative Patent Judge

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